

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNOPPOSED MOTION TO ADJOURN DECEMBER 13, 2017 STATUS CONFERENCE

In accordance with the Court's September 27, 2017 Case Management and Scheduling Order, *Batalla Vidal* ECF No. 67, and the Court's subsequent scheduling orders of October 2, 2017, October 11, 2017, October 23, 2017, November 6, 2017, and November 28, 2017, Defendants respectfully renew their request that the status conference in this matter currently

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Kirstjen M. Nielsen, in her official capacity as the Secretary of Homeland Security, has been substituted as a defendant in both of the above-captioned matters.

scheduled for this Wednesday, December 13, 2017, be adjourned indefinitely. As good cause for this request, which Plaintiffs do not oppose, Defendants offer the following:

1. Pursuant to the Court's October 11, 2017 Order, *Batalla Vidal* ECF No. 81, the next regularly scheduled status conference in this matter is set for this Wednesday, December 13, 2017, at 2:00 p.m. The purpose of this status conference is to discuss any pending discovery or record-related disputes between the parties.

2. In the Court's September 27, 2017 Minute Order, the Court contemplated that the parties would request adjournment or cancellation of these status conferences if they proved to be unnecessary. *See Sept. 27, 2017 Order* § III(a) ("If there are no pending disputes requiring court intervention, I will entertain a joint application to adjourn or cancel the conference.").

3. On October 20, 2017, the United States Court of Appeals for the Second Circuit issued an order staying all "discovery and record supplementation" in these matters pending further consideration of Defendants' petition for a writ of mandamus. *See Order, In re Duke*, No. 17-3345 (2d Cir. Oct. 20, 2017) (Cabranes, J.), *Batalla Vidal* ECF No. 91.

4. On October 24, 2017, a three-judge panel of the Court of Appeals extended that stay "until determination of the mandamus petition" filed by the government, and also noted that "[r]esolution of the mandamus petition is deferred until such time as the District Court has considered and decided expeditiously issues of jurisdiction and justiciability." *See Order, In re Duke*, No. 17-3345 (2d Cir. Oct. 24, 2017), *Batalla Vidal* ECF No. 99.

5. On November 9, 2017, the district court granted in part, denied in part, and reserved decision in part on Defendants' motion to dismiss. *See Batalla Vidal* ECF No. 104.

6. On November 20, 2017, the Court of Appeals scheduled oral argument on the government's mandamus petition for December 14, 2017. Notice of Motion Placed on the Calendar, *In re Duke*, No. 17-3345 (2d Cir. Nov. 20, 2017).

7. In similar litigation pending in the United States District Court for the Northern District of California, on December 8, 2017, the Supreme Court of the United States granted the government's application for a stay pending disposition of the government's petition for a writ of mandamus or, in the alternative, a writ of certiorari. Order, *In re United States et al.*, No. 17A570 (17-801) (S. Ct. Dec. 8, 2017). The Supreme Court's order stays several district court orders "to the extent they require discovery and addition to the administrative record filed by the Government" in the Northern District of California DACA-rescission matters. *Id.*

8. In this litigation, because all discovery and record supplementation have been stayed by the Second Circuit, there are currently no active discovery or record-related disputes to be resolved by this Court, and therefore there is currently no need for this Wednesday's upcoming status conference.

9. If, at some future date, the stay issued by the Second Circuit is lifted, Defendants are willing to confer promptly with both sets of Plaintiffs and jointly propose another date (or dates) for a status conference (or conferences) to discuss further proceedings in these matters.

10. Granting the requested relief will not effect any other deadlines.

11. This is the fourth request for an adjournment in these matters. On October 23, 2017, this Court granted a similar request, *Batalla Vidal* ECF No. 92, with respect to the status conference that had been scheduled for October 25, 2017. On November 6, 2017, this Court granted another similar request, *Batalla Vidal* ECF No. 103, with respect to the status conference that had been scheduled for November 8, 2017. And on November 28, 2017, this Court granted

in part and denied in part a third similar request, *Batalla Vidal* ECF No. 110, noting that, as to the December 13, 2017 status conference, the motion was “premature,” but that the denial of that portion of the government’s motion was “without prejudice to renewal.”

12. On December 7, 2017, undersigned counsel for Defendants contacted counsel for each group of Plaintiffs. The *State of New York* Plaintiffs reported that they “consent to Defendants filing a renewed motion to adjourn [the December 13, 2017] status conference.” The *Batalla Vidal* Plaintiffs reported that they “do not oppose Defendants filing a renewed motion to adjourn the upcoming status conference.”

Dated: December 11, 2017

Respectfully submitted,

CHAD A. READLER
Principal Deputy Assistant Attorney General

BRIDGET M. ROHDE
Acting United States Attorney

BRETT A. SHUMATE
Deputy Assistant Attorney General

JENNIFER D. RICKETTS
Director, Federal Programs Branch

JOHN R. TYLER
Assistant Branch Director

BRAD P. ROSENBERG
Senior Trial Counsel

/s/ Stephen M. Pezzi
STEPHEN M. PEZZI (D.C. Bar #995500)
KATE BAILEY
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, DC 20530
Tel.: (202) 305-8576
Fax: (202) 616-8470
Email: stephen.pezzi@usdoj.gov

JOSEPH A. MARUTOLLO
Assistant U.S. Attorney
United States Attorney's Office
Eastern District of New York
271-A Cadman Plaza East, 7th Floor
Brooklyn, NY 11201
Tel: (718) 254-6288
Fax: (718) 254-7489
Email: joseph.marutollo@usdoj.gov

Counsel for Defendants